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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 269

[Docket ID: DOD-2016-OS-0045]

RIN 0790-AK09

Civil Monetary Penalty Inflation Adjustment

AGENCY: Under Secretary of Defense (Comptroller), Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of Defense is issuing this final rule to adjust each of its statutory civil monetary penalties (CMP) to account for inflation. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), requires the head of each agency to adjust for inflation its CMP levels in effect as of November 2, 2015, under a revised methodology that was effective for 2016 and for each year thereafter.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and is applicable beginning on January 12, 2018.

FOR FURTHER INFORMATION CONTACT: Brian Banal, 703-571-1652.

SUPPLEMENTARY INFORMATION:

Background Information

The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, 104 Stat. 890 (28 U.S.C. 2461, note), as amended by the Debt Collection Improvement Act of 1996, Public Law 104–134, April 26, 1996, and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), Public Law 114-74, November 2, 2015, required agencies to annually adjust the level of CMPs for inflation to improve their effectiveness and maintain their deterrent effect. The 2015 Act required that not later than July 1, 2016, and not later than January 15 of every year thereafter, the head of each agency must adjust each CMP within its jurisdiction by the inflation adjustment described in the 2015 Act. The inflation adjustment is determined by increasing the maximum CMP or the range of minimum and maximum CMPs, as applicable, for each CMP by the cost-of-living adjustment, rounded to the nearest multiple of \$1. The cost-of-living adjustment is the percentage (if any) for each CMP by which the Consumer Price Index (CPI) for the month of October preceding the date of the adjustment (January 15), exceeds the CPI for the month of October in the previous calendar year.

The initial catch up adjustments for inflation to the Department of Defense's CMPs were published as an interim final rule in the **Federal Register** on May 26, 2016 (81 FR 33389-33391) and became effective on that date. The interim final rule was published as a final rule without change on September 12, 2016 (81 FR 62629-62631), effective that date. The revised methodology for agencies for 2018 and each year thereafter provides for the improvement of the effectiveness of CMPs and to maintain their deterrent effect. Effective 2018, agencies' annual adjustments for inflation to CMPs shall take effect not later than January 15. The Department of Defense is adjusting the level of all civil monetary penalties under its jurisdiction by the Office

of Management and Budget (OMB) directed cost-of-living adjustment multiplier for 2018 of 1.02041 prescribed in OMB Memorandum M-18-03, "Implementation of Penalty Inflation Adjustments for 2018, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015," dated December 15, 2017. The Department of Defense's 2018 adjustments for inflation to CMPs apply only to those CMPs, including those whose associated violation predated such adjustment, which are assessed by the Department of Defense after the effective date of the new CMP level.

Statement of Authority and Costs and Benefits

Pursuant to 5 U.S.C. 553(b)B, there is good cause to issue this rule without prior public notice or opportunity for public comment because it would be impracticable and unnecessary. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701(b)) requires agencies, effective 2017, to make annual adjustments for inflation to CMPs notwithstanding section 553 of title 5, United States Code. Additionally, the methodology used, effective 2017, for adjusting CMPs for inflation is established in statute, with no discretion provided to agencies regarding the substance of the adjustments for inflation to CMPs. The Department of Defense is charged only with performing ministerial computations to determine the dollar amount of adjustments for inflation to CMPs.

Further, there are no significant costs associated with the regulatory revisions that would impose any mandates on the Department of Defense, Federal, State or local governments, or the private sector. Accordingly, prior public notice and an opportunity for public comment are not required for this rule. The benefit of this rule is the Department of Defense anticipates that civil monetary penalty collections may increase in the future due to new penalty authorities and other changes in

this rule. However, it is difficult to accurately predict the extent of any increase, if any, due to a variety of factors, such as budget and staff resources, the number and quality of civil penalty referrals or leads, and the length of time needed to investigate and resolve a case.

Regulatory Procedures

Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” because it does not: (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in these Executive Orders.

Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs”

Executive Order 13771 requires that for every significant regulation promulgated, an agency must identify two for elimination and offset its costs. This rule is exempt from these requirements because it has been deemed not significant by the Office of Management and Budget.

Unfunded Mandates Reform Act (2 U.S.C. Chapter 25)

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule the mandates of which require spending in any year of \$100 million in 1995 dollars, updated annually for inflation. In 2016, that threshold is approximately \$146 million. This rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Public Law 96-354, “Regulatory Flexibility Act” (5 U.S.C. Chapter 6)

Because notice of proposed rulemaking and opportunity for comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

The Department of Defense determined that provisions of the Paperwork Reduction Act of 1995, Public Law 104-13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because there are no new or revised recordkeeping or reporting requirements.

Executive Order 13132, “Federalism”

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 269

Administrative practice and procedure, Penalties.

Accordingly, 32 CFR part 269 is amended as follows.

PART 269—[AMENDED]

1. The authority citation for 32 CFR part 269 continues to read as follows:

Authority: 28 U.S.C. 2461 note.

2. Revise §269.4(d) to read as follows:

§269.4 Cost of living adjustments of civil monetary penalties.

* * * * *

(d) *Inflation adjustment.* Maximum civil monetary penalties within the jurisdiction of the Department are adjusted for inflation as follows:

United States Code	Civil Monetary Penalty Description	Maximum Penalty Amount as of 01/15/17	New Adjusted Maximum Penalty Amount
National Defense Authorization Act for FY 2005, 10 U.S.C 113, note	Unauthorized Activities Directed at or Possession of Sunken Military Craft	\$126,626	129,211

10 U.S.C. 1094(c)(1)	Unlawful Provision of Health Care	\$11,119	11,346
10 U.S.C. 1102(k)	Wrongful Disclosure—Medical Records:		
	First Offense	\$6,575	6,709
	Subsequent Offense	\$43,832	44,726
10 U.S.C. 2674(c)(2)	Violation of the Pentagon Reservation Operation and Parking of Motor Vehicles Rules and Regulations	\$1,811	1,848
31 U.S.C. 3802(a)(1)	Violation Involving False Claim	\$10,957	11,181
31 U.S.C. 3802(a)(2)	Violation Involving False Statement	\$10,957	11,181

Dated: January 18, 2018.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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